

MINUTES OF HARRISONBURG PLANNING COMMISSION

September 14, 2011

The Harrisonburg Planning Commission held its regular meeting on Wednesday, September 14, 2011, at 7:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: Charles Chenault, Judith Dilts, MuAwia Da'Mes, Alan Finks, Deb Fitzgerald, Bill Jones and Henry Way.

Members absent: None.

Also present: Stacy Turner, Director of Planning and Community Development; Adam Fletcher, City Planner; Alison Banks, Planner and Secretary.

Chairman Jones called the meeting to order and determined there was a quorum with all members in attendance. He then asked if there were any corrections, comments or a motion regarding the minutes from the August 10, 2011 Planning Commission meeting.

Mr. Chenault moved to approve the minutes from the August 10th Planning Commission meeting.

Mrs. Fitzgerald seconded the motion.

Dr. Dilts abstained from voting because she was not in attendance at that meeting.

All voted in favor of approving the minutes. (6-0)

New Business

Preliminary Plat – Resubdivision of Lot 2, Deyerle Subdivision Section 25 (Litten & Sipe Property)

Chairman Jones read the request and asked staff to review.

At this time Mr. Chenault recused himself from the preliminary plat request.

Mr. Fletcher said the applicant is requesting to preliminarily subdivide their 5.3-acre parcel located at 410 Neff Avenue into two lots. Although this parcel is addressed from Neff Avenue, where the main entrance to the property is located, the lot has three street frontages. Along with its Neff Avenue frontage, a secondary entrance is located at its Reservoir Street frontage, and due to the recent extension of Lucy Drive, now has over 300 feet of property fronting that street.

The property division is considered a major subdivision (preliminary plat) because the original tract of land is larger than five acres; therefore it exceeds the requirements for administrative review as a minor subdivision, and must be reviewed by Planning Commission. The purpose of the subdivision is to create a 1.17-acre parcel along its Lucy Drive frontage. By-right, this undeveloped area, which for the most part is the backyard area of the existing business and professional office building, could be developed without subdividing the property. The subdivision, however, allows the property to be sold separately.

At this time, all three street frontages have some type of planned infrastructure improvement. Both Neff Avenue and Lucy Drive have the appropriate amount of street right-of-way width for their type of street classification, and since no dedications are needed, the City cannot require improvements to the property frontages during the subdivision process. However, if and/or when the property develops or redevelops, the associated property frontages shall be improved as necessary.

Unlike the right-of-way widths of Neff Avenue and Lucy Drive, Reservoir Street does not have the necessary area along this property's 50 feet of road frontage for the planned improvements to that street. Currently, along the subject property, Reservoir Street has 60 feet of public right-of-way and based upon the most up-to-date plans for the Reservoir Street improvements, 90-feet of right-of-way is needed. At this time, this section of the street is planned to include four travel lanes (two in each direction) along with bicycle and pedestrian facilities. Due to the planned type, design, and location of the new street, the City does not need the typical 45-feet of right-of-way on this side of the street from the existing centerline. This is because the new street's location will be shifting slightly away from this property's frontage. For the planned up-grades at this location, the City needs five-feet of additional public right-of-way, and 45-feet for a public drainage easement beyond the newly established right-of-way line. These dedications are shown on page 2 of the plat.

Because the subject property's Reservoir Street frontage is only 50-feet wide, and because the improved street is planned to shift away from this property, the requirement to dedicate right-of-way, in this scenario, does not also require the applicant to build the associated street improvements. This is because the property street frontage is only wide enough to include the pavement to reconnect the improved street with the existing drive-way; no public travel lanes or public sidewalks would exist in the area being dedicated.

The division conforms to the regulations of the Subdivision Ordinance, therefore approval from Planning Commission would endorse the subdivision and allow the applicant to submit a final plat and continue to subdivide the parcel through an administrative review; no approval from City Council is required. As always, during the final platting process, the applicant will be required to submit a deed of easement for the required public easements associated with the plat.

Staff recommends approval of the preliminary plat.

Chairman Jones asked if there were any questions for staff. Hearing none, he said this is not a public hearing; however, if the applicant or the applicant's representative would like to speak they may do so at this time. Hearing none, he asked Planning Commission for discussion or a motion.

Mr. Finks said I do not see anything that is a problem with this request and would like to make a motion to approve the preliminary plat.

Mr. Da'Mes seconded the motion.

Chairman Jones called for a voice vote on the motion.

All voted in favor (6-0) of the motion to recommend approval of the preliminary plat.

Mr. Chenault returned to the Council Chambers at this time.

Rezoning – Proffer Amendment 120 West Wolfe Street

Chairman Jones read the request and asked staff to review.

Mr. Fletcher said the Comprehensive Plan designates this area as Mixed Use Development. This designation includes both existing and proposed new mixed use areas. These areas are intended to combine residential and non-residential uses in planned neighborhoods where the different uses are finely mixed instead of separated. These areas are prime candidates for "live-work" and traditional neighborhood developments. Live-work developments combine residential and office/service uses allowing people to both live and work in the same area, which could be combined in the same building or on the same street. The gross residential density in areas outside downtown should not

exceed an average of 15 units per acre, though all types of residential units are permitted: single family detached, single family attached and apartments. Apartments are permitted only if single family detached and/or attached units are also provided and together cover a greater percentage of the project site. Residential densities in downtown may be higher than an average of 15 units per acre, and commercial uses would be expected to have an intensity equivalent to a Floor Area Ratio of at least 0.4, although the City does not measure commercial intensity in that way.

The following land uses are located on and adjacent to the property:

- Site: Illegal vehicle repair shop, zoned B-1C (with a tabled SUP application to legally permit the vehicle repair shop) and vacant land, zoned B-1C
- North: Vacant property (owned by the applicants), zoned M-1
- East: Across the Norfolk Southern Rail Line, vacant paved lot, zoned B-1
- South: Across West Wolfe Street, vacuum repair shop, zoned M-1
- West: Non-conforming dwelling unit, zoned M-1

The property owners, through suggestion by City staff, are requesting to rezone their B-1C, Central Business District Conditional property at 120 West Wolfe Street by modifying the existing proffers. The reasoning is to appropriately adjust the proffers to allow businesses to legally operate in the existing buildings.

One should recall that the properties were rezoned in March 2009 from M-1, General Industrial District to B-1C. At that time, the property owners' plan was to demolish the existing structures and to construct a mixed use building containing commercial and residential uses. The proffers (written verbatim) were approved as follows: (The proffer letter and mentioned exhibits are provided for reference within the packet.)

1. The site Plan as provided in Exhibit A is proffered as to general layout, approximate square footage of the building and dedicated parking. The amount of commercial space will be up to 2,816 sq. ft., and the amount of residential space will be up to 6,570 sq. ft. The number of residential units will not exceed 7. The number of bedrooms will not exceed 9. The building will be Mixed Use.
2. The occupancy of each residential unit will not exceed a single family or two unrelated persons per unit.
3. Parking for residential units will be one space per bedroom. Parking for commercial space will be one space for each 300 sq. ft.
4. Use Restrictions. The following uses as delineated in Harrisonburg's Zoning Ordinance, Article P. B-1 Central Business District, §10-3-84 shall be permitted on the Property:
 - a. Retail stores, convenience shops, personal service establishments, restaurants, food and drug stores;
 - b. Governmental, business, professional offices and financial institutions;
 - c. Hotels, motels, and buildings used for dwelling units, CBD, as defined under Article F, except that such occupancy may be superseded by building code regulations;
 - d. Theaters, community rooms, museums and galleries and other places of assembly for the purpose of entertainment or education;
 - e. Religious, educational, charitable and benevolent institutional uses which do not provide housing facilities;

- f. General service or repair shops, when not employing more than ten (10) persons on the premises in a single shift (not including persons whose principal duties are off the premises) and providing that all storage and activities are conducted within a building;
 - g. Accessory uses incidental to any permitted uses which are attached to or within the principal building.
- 5. Applications will be made for all Special Uses where necessary.
 - 6. Buffer. A 6' fence of one type shown in Exhibit B will be placed on the west boundary of the property.
 - 7. Landscaping will include a minimum of two (2) deciduous trees or planters and a minimum of ten (10) bushes in locations as shown on the conceptual plan.
 - 8. The buildings will have a brick façade on the south side of the building facing Wolfe St. and the east side facing the railroad, and no vinyl siding will be used on any part of the façade. A brick walkway or brick stamped decorative concrete will be provided on the south side of the building where elevation permits. The style of the building will be esthetically similar to Exhibit C. A bicycle rack will be located on the property.
 - 9. Severability. The unenforceability, illegality, elimination, revision, or amendment of any proffer set forth herein, in whole or in part, shall not affect the validity or enforceability of the other proffers or the unaffected part of any such proffer.

The reasoning for this request arose soon after the July 13th Planning Commission public hearing, where the property owners requested to bring their illegal vehicle repair use into conformance with the Zoning Ordinance by applying for a special use permit (SUP) to allow for vehicle repair in the B-1 zoning district. Following the meeting, staff discussed whether this special use could operate within the existing buildings as the proposed plan for a new building was specifically submitted as a rezoning proffer. The rezoning proffers were developed around a new mixed-use building containing the permitted uses. Staff determined that using the existing building for the auto repair use would be a problem with existing proffers, and that to allow for the SUP in the existing buildings, this situation should be rectified.

Staff then contacted the property owners to discuss the matter and explained the proffers were worded in such a manner that no use could operate on the site unless it met the proffered description, which included the site plan. Understandably, this seemed impractical given the existing structure was clearly usable, designed for, and recently used as, a vehicle repair shop, and furthermore, that staff and Planning Commission unanimously believed that vehicle repair was an appropriate use for the subject parcel, in the existing buildings. Nevertheless, allowing such a situation to progress could cause problems in the future, essentially setting a precedent that allowed property owners to pick and choose the proffers they wanted to fulfill, which is illegal.

After discussing the situation, the property owners tabled their SUP request prior to its advertisement for the City Council public hearing, and diligently submitted the application to amend the proffers on the subject property to legally allow uses to operate in the existing buildings. The major change in the proffers is with the addition of proffer #10, which states: *Until the site is developed per the plan discussed herein, the Owners will be entitled to use the current buildings and the property as permitted by right as described in paragraph 4 above and all Special Uses approved by City Council.*

In short, this additional proffer essentially clarifies that the existing buildings may be used. There are no other changes to the proffers. The amendment to the proffers maintains the property's consistency with the surrounding uses and its conformance with the Comprehensive Plan.

The applicants' tabled SUP request will proceed simultaneously with this rezoning/proffer amendment to City Council.

Staff appreciates the understanding and cooperation of the property owners. Although this issue may seem like a small, technical detail, rectifying this situation is important to the integrity of the City's conditionally zoned properties and to protecting property rights for the City's residents.

Staff supports the submitted proffer amendment.

Chairman Jones asked if there were any questions for staff. Hearing none, he opened the public hearing and asked if the applicant or their representative would like to speak.

Mr. Casey Stemper said he is one owner in the project and he has nothing to add at this time.

Chairman Jones asked if there was anyone wishing to speak in favor of the proposed proffer amendment. Hearing none, he asked if there was anyone wishing to speak in opposition to the request. Hearing none, he closed the public hearing and asked for discussion or a motion.

Mr. Da'Mes asked if all the items and conditions discussed at the special use hearing were still applicable or if they were now null and void.

Mr. Fletcher replied that everything is still applicable. Essentially what happened was once we determined that there really should be some type of rectification procedure to protect this property and other conditionally zoned properties in the City, we spoke with the applicant and informed them that it would be best to put the special use permit request on hold. Then we could correct this matter and both requests could move forward to City Council in October. The applicants completely understood and we appreciate all of their cooperation.

Therefore, the answer to your question is all of the conditions and the favorable recommendations by staff and Planning Commission for the special use permit request would still be in place.

Mr. Way said he is glad that staff picked up on this matter and it is being corrected.

Chairman Jones asked if there was any further discussion.

Dr. Dilts moved to accept the proffer amendment for 120 West Wolfe Street.

Mr. Way seconded the motion.

Chairman Jones called for a voice vote on the motion.

All voted in favor (7-0) of the motion to recommend approval of the rezoning request to amend the proffers at 120 West Wolfe Street.

Chairman Jones said this will move forward to City Council on October 11, 2011, along with the Special Use Permit request; and both with a favorable recommendation from this body.

Rezoning – Brookside Park Amendment 2011 Submission #2

Chairman Jones read the request and asked staff to discuss.

Mrs. Banks said the Comprehensive Plan designates this area as Medium Density Mixed Residential. This designation states that these largely undeveloped areas continue the existing medium density character of adjacent areas, but in a different form. They are planned for small-lot single family detached and single family attached neighborhoods where green spaces are integral design features. Apartments could also be permitted under special circumstances. They should be planned communities that exhibit the same innovative features as described for the low density

version of mixed residential development. The gross density of development in these areas should be in the range of 4 to 12 dwelling units per acre and commercial uses would be expected to have an intensity equivalent to a Floor Area Ratio of at least 0.4, although the City does not measure commercial intensity in that way.

The following land uses are located on and adjacent to the property:

- Site: Single-family homes and undeveloped lots, zoned R-7
- North: Undeveloped lots, zoned M-1 and industrial uses, zoned M-1 and non-conforming single family home, zoned M-1
- East: Dwelling units, zoned R-2
- South: Dwelling units, zoned R-2
- West: Undeveloped lots, zoned M-1 and commercial and industrial uses, zoned M-1

This acreage was rezoned in June 2006 from R-2, Residential District and R-2C, Residential District Conditional to R-7, Medium Density Mixed Residential Planned Community. The R-7 approved plan of development consisted of 35 building lots and a 1.44 acre parcel set aside for a park. The applicant received preliminary plat approval in September 2006 and final plat approval in June 2007. All building lots front along public streets including Roberts Court, Drake Lane, and Suter Street. Site work began on the property in April 2007 when the comprehensive site plan was approved, and the first building permits were approved in the summer of 2007.

The master development plan described three different dwelling types: courtyard homes, single family detached homes, and duplexes. The plan identified six courtyard dwelling lots, fifteen single family detached lots and fourteen duplex lots. The courtyard homes allowed a buyer the option of three different styles of buildings. The single-family detached homes had five home style choices and the duplex lots had four home style options. An attached garage was defined for each home style option.

As an R-7 development, the area, width, depth, and setbacks for each lot must conform to the approved plan and narrative description of the project as well as the defined landscaping features. Additionally, the applicant offered the following as part of their responsibilities for the development of this project:

1. A tree of 2" or greater caliper in each yard.
2. Landscaping for each unit.
3. Upgraded light poles.
4. Front of unit to have masonry accents.
5. Exposed block foundation covered with masonry product.
6. Asphalt or concrete driveway.
7. Sidewalk to be concrete from driveway to front door.

In October 2007, an amendment was approved to revise the Brookside Park plan of development. The revision combined the courtyard and single-family detached home style choices, as well as added three new options. This provided a potential homebuyer a choice of ten different home styles to choose from and allowed for more variety within the subdivision. Additionally, the revision exchanged a proposed duplex lot for two single-family detached lots, and adjusted rear setbacks for lots abutting the open space.

The current request is to amend the master plan of development by removing the requirement of an attached garage for every dwelling option. Diversified Development Solutions, LLC owns six of the twelve duplex lots within Brookside Park; specifically, six lots fronting along the northern side of Roberts Court. With a desire to offer a more affordable product to the homebuyer, the applicant would like to have the option to construct the six dwellings (three duplexes) without garages. Instead, an asphalt or concrete driveway would be provided that could accommodate two vehicles. If approved, the applicant has a buyer for the parcels who intends to construct the duplexes. All other proffers and specifics of the approved plan of development would remain the same.

Because Brookside Park is a master planned community it can only be developed and redeveloped in accordance with the approved master plan adopted at the time of rezoning or a subsequent approved amendment, where all property owners must give consent. Prior to submitting an application for zoning amendment, the applicant met with individual property owners of Brookside Park regarding the change to the specific six parcels and obtained signatures from each owner, which gave consent for the proposed amendment.

After the application was submitted for review, staff visited the site and observed that several of the vacant lots within the subdivision were in violation of the City's tall grass and weeds ordinance, Section 16-6-58. In addition, some of the same lots were in violation of Section 6-2-6 for the accumulation of junk, rubbish, or trash. A notice of violation for the infractions was mailed to each property owner where violations existed.

Staff also noticed that proffers within the approved plan of development had not been met for all of the existing dwelling lots. The proffer to provide a tree of 2 inches or greater caliper in each yard had not been fulfilled; eight of thirteen developed parcels do not have a tree as proffered. Because the applicant is one of the original developers of Brookside Park and still maintains ownership in nine of the vacant parcels within the subdivision, staff contacted them with the non-compliance issue, rather than writing a notice of violation to each individual homeowner. At this time, a solution to resolve the non-compliant status has not been proposed; however, the applicant has stated a desire to cooperate with the City on this issue rather than notifying each homeowner.

The requested revision would not affect the intent of the project nor change the design layout of the community; and therefore staff recommends in favor of the request. However, the property owners must correct their violations relating to tall grass and weeds and the accumulation of junk and other debris on the site. As well, the proffer violation shall be rectified. Failure to correct any violation could result in a misdemeanor charge. It should be clearly understood, that if the rezoning is approved, City staff will continue to ensure that each lot is brought into compliance with City Code and the approved plan of development.

Chairman Jones asked if there were any questions for staff.

Mr. Way asked if the space for the driveway was still the same as it would be for a garage.

Mrs. Banks replied the owner has stated that each unit would have two off-street parking spaces available; however staff does not know the details of the spaces, whether they are side-by-side or front and back.

Mr. Way said hopefully it would not be reducing green space in a large way.

Mrs. Banks said not that we are aware of.

Mrs. Fitzgerald asked for clarification regarding a sentence within the staff report; specifically, the first sentence under the Evaluation portion of the report where it reads “The current request is to amend the master plan of development by removing the requirement of an attached garage for every dwelling option.” In reality, it is just for the six units.

Mrs. Banks replied correct, I can see the confusion. The request is to remove the requirement of an attached garage for only the six dwellings on the north side of Roberts Court.

Chairman Jones opened the public hearing and asked if the applicant or applicant’s representative would like to speak. Hearing none, he asked if there was anyone wishing to speak in favor of the request. Hearing none, he asked if there was anyone wishing to speak in opposition of the request. Hearing none, he closed the public hearing and asked Planning Commission for discussion or a motion.

Mr. Finks said there were only two of us on the site visit Monday and we found out a few things regarding this request that are a real plus for this project; therefore, I move to approve the request to amend the master development plan.

Dr. Dilts seconded the motion.

Mrs. Banks said what Mr. Finks is referring to is the fact that Habitat for Humanity is proposing to purchase these lots and they cannot construct dwellings with garages.

Chairman Jones called for a voice vote on the motion.

All voted in favor of the motion to approve the rezoning request to amend the master plan of development (7-0).

Chairman Jones said this request will moved forward to City Council on October 11th with a favorable recommendation.

Subdivision Ordinance Amendment – 10-2-23 and 25

Chairman Jones read the request and asked staff to review.

Mr. Fletcher said Section 10-2-23 (15) specifies the fees associated with applying for preliminary plats and any associated variances to the subdivision ordinance. The City’s approved budget increased the base fee for preliminary plats by just over 15 percent from \$150.00 to \$175.00 and increased variance request base fees by just under 15 percent from \$175.00 to \$200.00. The per-lot cost for both types of requests was increased 100 percent from \$10.00 per lot to \$20.00 per lot.

Section 10-2-23 (15) should be amended as shown below.

(15) The fee for filing a preliminary plat without a variance shall be ~~one hundred fifty dollars (\$150.00) plus ten dollars (\$10.00)~~ one hundred seventy-five dollars (\$175.00) plus twenty dollars (\$20.00) per lot, or if filing a preliminary plat with a variance the fee shall be ~~one hundred seventy-five dollars (\$175.00) plus ten dollars (\$10.00)~~ two hundred dollars (\$200.00) plus twenty dollars (\$20.00) per lot, made payable to the city. The fee shall be paid upon the filing of the plat with the city.

In addition, if the preliminary plat requires a traffic impact analysis (TIA) review by the Virginia Department of Transportation (VDOT), then all additional fees for that review shall be made payable to the Virginia Department of Transportation. If the preliminary plat requires a ~~traffic impact analysis~~ TIA review, only by the city, then one thousand dollars

(\$1,000.00) shall be made payable to the city. The preliminary plat application shall not be considered accepted until the TIA has been reviewed.

As well, Section 10-2-25 (b) (14) indicates the review costs associated with submitting a final plat. Unlike the preliminary plat fee increase, which was approved by the latest budget process, the final plat fees were not recently increased. Nonetheless, this City Code section should be modified to reflect the current fees as this section has not been updated since prior to 1993.

The above described preliminary plat fee increases are now consistent with the existing final plat fees, which are \$150.00 plus \$20.00 per lot. The final plat fees, which are also the minor subdivision plat fees, were approved during the 2007-2008 budget process, where the only change that occurred was an additional \$50.00 on the base fee.

Along with the changes as described, Section 10-2-25 (b) (14) should be relocated and designated more appropriately within this part of the City Code. Rather than being specified as (b) (14), this language should be referenced as subsection (d) within Section 10-2-25.

Section 10-2-25 (b) (14) should be amended as shown

~~(14) The fee for filing a final plat shall be fifty dollars (\$50.00) plus ten dollars (\$10.00) per lot, which fee shall be payable to the City of Harrisonburg. The fee shall be paid upon the filing of the plat with the city. On January, 1993, the above referenced fees shall double.~~

(d) The fee for filing a final plat shall be one hundred fifty dollars (\$150.00) plus twenty dollars (\$20.00) per lot, made payable to the City. The fee shall be paid upon the filing of the plat with the City.

Chairman Jones asked if there were any questions for staff. Hearing none, he opened the public hearing and asked if there was anyone wishing to speak in favor of this proposal. Hearing none, he asked if there was anyone wishing to speak in opposition of this proposal. Hearing none, he closed the public hearing and asked Planning Commission for a motion.

Mr. Way moved to approve the amendments as presented.

Mrs. Fitzgerald seconded the motion.

Chairman Jones called for a voice vote on the motion.

All voted in favor of the motion to approve the Subdivision Ordinance Amendments as presented (7-0).

Chairman Jones said this will go to City Council on October 11, 2011.

Unfinished Business

None.

Public Input

None.

Report of secretary and committees

Mrs. Banks said the 500-600 block section of South Main Street was inspected as part of proactive zoning for August 2011. There were 16 violations consisting of inoperable vehicles and discarded materials. Next month zoning inspectors will be in the Court Square area.

Other Matters

Update on the Draft Parking Lot Landscaping Ordinance

Mr. Fletcher said I wanted to update Planning Commission on the draft of the Parking Lot Landscaping Ordinance. Staff has continued to move forward with this. About two weeks ago we met with and reviewed input from staff within other departments, such as Parks and Recreation, Public Works, Public Utilities, HEC, along with the City Engineer. We had some good discussion and received some good recommendations to the actual text itself. At this point we are still in the phase of revising some of the language and doing a bit of research on how to handle certain situations, like landscaping for parking decks.

The next step is to contact some private landscapers or architects and have them review what we have proposed and allow them to provide some feedback. Once that occurs, if revisions are needed we will push those through and then we will present it to Planning Commission for your review. I do not know if we would need an entire work session, perhaps we could just include it at the end of a regular meeting. Tonight, however, we could discuss how we may want to put it out to the public for their input. Do we want to do an in house thing where staff is available to discuss the ordinance – Planning Commission could be available at this as well? This could be accomplished during a couple of hours, whether during the day or the evening, when people could stop by to review and provide input on the ordinance.

I do not know what the feeling is going to be on this ordinance; whether it will be contentious or be well accepted. Perhaps we would have a better idea after the private landscapers give us an idea on what their thoughts are. This generally summarizes where we are with the progress on the landscape ordinance.

October 2011 Planning Commission Meeting

Mr. Fletcher said for next month's meeting there are no agenda items.

Chairman Jones said if it would please the Planning Commission I would accept a motion to cancel the October 2011 meeting.

Dr. Dilts moved to cancel the October 2011 regular meeting.

Mr. Finks seconded.

All voted in favor of the motion (7-0).

Adjournment

The meeting was adjourned at 7:30 p.m.

Chairman William L. Jones, Jr.

Secretary, Alison Banks